

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 In re:

11 SETH BASIL COLCHESTER,

12 Petitioner,

13 v.

14 JEWEL LAZARO,

15 Respondent.

CASE NO. C20-1571-JCC

ORDER

16 This matter comes before the Court on Petitioner Seth Basil Colchester's motion for
17 immediate return of a child pursuant to the 1980 Hague Convention on the Civil Aspects of
18 International Child Abduction ("Convention") (Dkt. No. 17). Having thoroughly considered the
19 parties' briefing and the relevant record, the Court hereby DENIES the motion for the reasons
20 explained herein.

21 It is undisputed that a Spanish court awarded Mr. Colchester sole custody of S.L.C., his
22 five-year-old child with Respondent Jewel Lazaro, in January 2020. (Dkt. Nos. 23-1 at 19, 26 at
23 5.) It is also undisputed that Ms. Lazaro brought S.L.C. to this Court's jurisdictional district, in
24 violation of the Spanish court's order, in April 2020. (Dkt. Nos. 17 at 3, 26 at 12.)¹ This is not

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26 ¹ S.L.C. is currently under the care of S.L.C.'s maternal grandmother and/or aunt, who
are serving as Mr. Colchester's agent in this capacity. (Dkt. Nos. 13 at 2, 17 at 6, 26 at 13.)

1 the first time Ms. Lazaro has violated a court’s order regarding S.L.C.’s custodial arrangement.
 2 (Dkt. No. 12-9 at 3–4, 17 at 3, 26 at 9.)

3 Following the most recent abduction, Mr. Colchester brought a petition to the Snohomish
 4 County Superior Court, seeking S.L.C.’s immediate return to him in Spain, as provided by the
 5 Convention and as implemented by the International Child Abduction Remedies Act (“ICARA”),
 6 22 U.S.C. §§ 9001–9011. (See Dkt. No. 1-1.) Ms. Lazaro removed the matter to this Court. (Dkt.
 7 No. 1.)

8 Presently before the Court is Mr. Colchester’s motion for judgment on the pleadings.²
 9 (See generally Dkt. Nos. 17, 33.) Mr. Colchester asks the Court to order Ms. Lazaro to return
 10 S.L.C. to Mr. Colchester’s care in Spain. (*Id.*) He seeks this order without the Court’s
 11 consideration of summary judgment briefing or an evidentiary hearing. (*Id.*) According to Mr.
 12 Colchester, the Court has ““a substantial degree of discretion in determining the procedures
 13 necessary to resolve a petition filed pursuant to the Convention and ICARA.”” (Dkt. No. 33 at 3
 14 (quoting *West v. Dobrev*, 735 F.3d 921, 930 (10th Cir. 2013).) However, to obtain the relief Mr.
 15 Colchester seeks, Mr. Colchester must, at a minimum, establish a *prima facie* case that Ms.
 16 Lazaro’s April 2020 removal of S.L.C. from Spain was wrongful under Spanish law and that
 17 Spain was S.L.C.’s “habitual residence” at that time. 22 U.S.C. § 9003(e)(1)(A); *Shalit v. Coppe*,
 18 182 F.3d 1124, 1128 (9th Cir. 1999).

19 Ms. Lazaro cannot meaningfully dispute that her April 2020 removal of S.L.C. was
 20 wrongful under Spanish law. (See Dkt. No. 23-1 at 172–73 (April 14, 2020 ruling from Spanish
 21 court for S.L.C.’s immediate return to Mr. Colchester in Spain).) Therefore, this is not an
 22 obstacle to the relief Mr. Colchester seeks.

23 But it is not clear to the Court that Mr. Colchester has met his burden to establish that

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 25 ² Mr. Colchester did not style his motion as one seeking a judgment on the pleadings, but
 26 in reply argued that this Court has authority to provide the relief he seeks through a judgment on
 such a motion. (Dkt. No. 33 at 2–3.) Therefore, the Court will consider the instant motion to be
 one seeking a judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c).

1 S.L.C. was “habitually resident” in Spain prior to her removal. Convention at Article 3(a). This is
 2 a “fact-driven inquiry,” with a final determination based upon the totality of the circumstances.
 3 *Monasky v. Taglieri*, 140 S. Ct. 719, 727 (2020). At a minimum, Mr. Colchester must establish
 4 habitual residence by a preponderance of the evidence. *See Shalit*, 182 F.3d at 1128; *In re*
 5 *Tsarbopoulos*, 243 F.3d 550, slip op. at 1 (9th Cir. 2000) (unpublished). If he were to do so, the
 6 burden would shift to Ms. Lazaro to demonstrate, by clear and convincing evidence, that
 7 returning S.L.C. to Mr. Colchester’s care would result in a grave risk of physical or
 8 psychological harm. 22 U.S.C. § 9003(e)(2)(A).

9 In support of his assertion that S.L.C. habitually resided with him in Spain at the time of
 10 Ms. Lazaro’s most recent abduction, Mr. Colchester presents his own November 21, 2020
 11 declaration, *ex parte* findings from a Spanish court dated April 14, 2020, and findings from the
 12 Snohomish and King County Superior Courts on related but separate issues dated July 24, 2020
 13 and October 28, 2020, respectively. (Dkt. Nos. 23 at 3–5; 23-1 at 113, 168, 172.) These
 14 documents would provide *some* evidence that S.L.C.’s habitual residence at the time of removal
 15 was with him in Spain. But they are rebutted by Ms. Lazaro’s own December 7, 2020 declaration
 16 and a report prepared by a Spanish psychologist who interviewed S.L.C. at a hotel in Spain
 17 shortly after Ms. Lazaro absconded with her. (*See* Dkt. Nos. 32 at 1–14, 32-3, 32-4, 51, 51-1.)
 18 Without a hearing or other means to assess the credibility of this evidence, the Court cannot
 19 determine whether Mr. Colchester has met his evidentiary burden.³

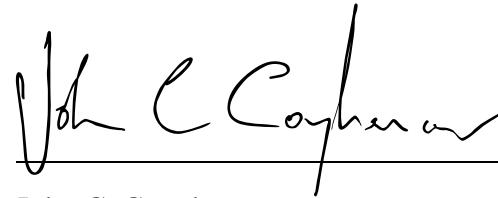
20 For the foregoing reasons, Mr. Colchester’s motion for immediate return (Dkt. No. 17) is
 21 DENIED. If either party wishes to expedite the case management deadlines previously provided
 22 in the Court’s entry (Dkt. No. 5) or suggest an alternative means of resolving their dispute, they
 23 may so move, either on a contested or stipulated basis. But absent such a motion, the parties

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 25 ³ The Court disregards the Snohomish County Superior Court’s 2018 findings on this
 26 issue because it predates, by more than a year, S.L.C.’s removal and does not consider the legal
 standard established in *Monasky*, 140 S. Ct. at 727, for assessing the habitual residency of a
 young child. (*See* Dkt. No. 12-9 at 3.)

1 should anticipate that this matter will proceed in due course.

2 DATED this 23rd day of December 2020.

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John C. Coughenour

UNITED STATES DISTRICT JUDGE